

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JOHN W. GOFF AND GOFF GROUP,
INC.,**

Plaintiffs,

v.

PHOENIX-DURANGO, ET AL.,

Defendants.

**CIVIL ACTION NO.
CV - 2:06cv389-MEF**

DEFENDANTS' RENEWED OBJECTION TO PLAINTIFF'S MOTION TO REMAND

COMES NOW Phoenix-Durango, LLC, Jeremiah A. Henderson II, and Jeremiah A. Henderson III, defendants in the above-styled action, and for their Renewed Objection to Plaintiff's Motion to Remand, say as follows:

On May 26, 2006, Plaintiff John W. Goff, a resident of Alabama, filed a Motion to Remand, arguing lack of diversity jurisdiction because "it is reasonable to assume that at least one of the Defendants [Jeremiah A. Henderson II or Jeremiah A. Henderson III] has a domicile in Alabama." *See* Plaintiff's Brief in Support of Motion to Remand, With Motion for Leave and Extension of Time to Conduct Jurisdictional Discovery, filed May 26, 2006. Plaintiff's sole basis for this "assumption of residency" is that simply because the Hendersons own property in Alabama, they must be residents of Alabama. On June 8, 2006, Defendants filed an Objection to Plaintiff's Motion to Remand, attaching as exhibits affidavits signed by Jeremiah A. Henderson II and Jeremiah A. Henderson III which show unequivocally that Jeremiah A. Henderson II is a resident of Texas and that Jeremiah A. Henderson III is a resident of Florida and that both have the mental intent to remain in their respective states. *See* Affidavit of Jeremiah A. Henderson II and Affidavit of Jeremiah A. Henderson III, attached as Exhibits 1 and 2 to Defendants'

Objection to Plaintiff's Motion to Remand, filed June 8, 2006. One's "citizenship" or "domicile" for diversity jurisdiction purposes is determined by two factors: "(1) physical presence within a state; and (2) the mental intent to make a home there indefinitely." *McDonald v. Equitable Life Ins. Co. of Iowa*, 13 F.Supp. 2d 1279 (M.D. Ala. 1998). Clearly, both Jeremiah A. Henderson II and Jeremiah A. Henderson III, who reside within Texas and Florida, respectively, and who have the mental intent to make their homes in Texas and Florida, respectively, are residents of Texas and Florida for diversity jurisdiction purposes. This Court has diversity jurisdiction under 28 U.S.C. § 1332.

Plaintiff's sole response to Defendants' Objection to Plaintiff's Motion to Remand was the filing of an unauthenticated printout from www.whitepages.com, which contained a listing for a Jere Henderson in Troy, Alabama. *See* Plaintiff's Notice of Filing Evidentiary Materials, filed June 14, 2006. The telephone number in question services a log cabin which was built by Jeremiah A. Henderson's ancestors around 1850. *See* Affidavit of Jeremiah A. Henderson III, attached hereto as Exhibit A. The majority of the land surrounding the log cabin was sold to Lockheed over ten years ago, but the family kept the twenty acres on which the log cabin was located. *See* Exhibit A. The telephone number for the log cabin has been listed in Jeremiah A. Henderson II's name since the number was obtained in approximately 1985, but Jeremiah A. Henderson II has never resided in the cabin. *See* Exhibit A. Jeremiah A. Henderson II left Alabama and moved to Florida, and subsequently to Texas, more than ten years ago. *See* Exhibit A. He is presently a resident of Humble, Texas, where he has resided since January 2004 and where he intends to continue to reside. *See* Exhibit A; *see also* Exhibit 1 to Defendants' Objection to Plaintiff's Motion to Remand, filed June 10, 2006.

Clearly, this Court has original jurisdiction. Complete diversity of citizenship exists between Plaintiffs and all defendants: Plaintiff Goff Group, an Alabama corporation with its principal place of business in Alabama; Plaintiff John W. Goff, a citizen of Alabama; Defendant Phoenix-Durango, a limited liability company which is a citizen of Texas and Florida, the states in which its members are citizens; Defendant Jeremiah A. Henderson II, a citizen of Texas; and Defendant Jeremiah A. Henderson III, a citizen of Florida. Removal of this action was proper pursuant to 28 U.S.C. §§ 1332 and 1441.

WHEREFORE, ABOVE PREMISES CONSIDERED, Defendants request this Honorable Court enter an order denying Plaintiff's Motion to Remand and retaining jurisdiction over this matter which was properly removed to this Court under diversity jurisdiction.

s/Vernon L. Wells, II

s/C. Ellis Brazeal

Attorneys for Defendants Jeremiah A. Henderson II,
Jeremiah A. Henderson III, and Phoenix-Durango,
LLC

OF COUNSEL
Walston, Wells & Birchall, LLP
1819 5th Avenue North, Suite 1100
Birmingham, Alabama 35203
Telephone: (205) 244-5200
Telecopier: (205) 244-5400

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2006, I electronically filed the foregoing DEFENDANTS' RENEWED OBJECTION TO PLAINTIFF'S MOTION TO REMAND with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas T. Gallion, III
Jamie Austin Johnston
Haskell, Slaughter, Young & Gallion, LLC
PO Box 4660
Montgomery, Alabama 36103-4660

F. Chadwick Morriss
Alan Thomas Hargrove, Jr.
Rushton, Stakely, Johnston & Garrett, PC
PO Box 270
Montgomery, Alabama 36101-0270

Jason James Baird
Slaten & O'Connor, PC
105 Tallapoosa Street, Suite 101
Montgomery, Alabama 36104

Leura Garrett Canary
Attention: Patricia Allen Conover
Assistant U.S. Attorney
Post Office Box 197
Montgomery, Alabama 36104

Issac Ripon Britton, Jr.
Hand Arendall, LLC
2001 Park Place North
Suite 1200
Birmingham, Alabama 35203

Winston Whitehead Edwards
David Cushing Hilyer
Craddock, Reneker & Davis, LLP
4142 Carmichael Road, Suite C
Montgomery, Alabama 36106

Paul L. Beckman, Jr.
Capouano, Beckman & Russell, LLC
PO Box 4689
Montgomery, Alabama 36103-4689

George Marion Neal, Jr.
Anthony Ryan Smith
Sirote & Permutt, PC
PO Box 55727
Birmingham, Alabama 35255-5727

Paul Kenneth Lavelle
Yearout, Spina & Lavelle, PC
1500 Urban Center Drive, Suite 450
Birmingham, Alabama 35242

Donald Christopher Carson
Janine L. Smith
Burr & Forman, LLP
420 North Twentieth Street, Suite 3100
Birmingham, Alabama 35203

and I hereby certify that I have mailed by U.S. Postal Service the document to the following non-CM/ECF participants:

Lewis B. Hickman, Jr.
915 S. Hull Street
Montgomery, Alabama 36104

Robert W. West
Associate Area Counsel
Internal Revenue Service, Room 257
801 Tom Martin Drive
Birmingham, Alabama 35211

Internal Revenue Service
Insolvency Unit, Room 126
801 Tom Martin Drive
Birmingham, Alabama 35211

Michael J. Ernst
Stokes, Lazarus & Carmichael, LLP
80 Peachtree Park Drive, NE
Atlanta, Georgia 30309-1320

MBNA America Bank (Delaware)
Registered Agent, MBNA America Bank (Delaware)
1100 North King Street
Wilmington, Delaware 19884

CSC Lawyers Incorporating Service, Inc.
Registered Agent, Kemmons Wilson, Inc.
150 Perry Street
Montgomery, Alabama 36104

Daniel Realty Company

Registered Agent, Meadow Brook North, LLC
3595 Grandview Parkway, Suite 400
Birmingham, Alabama 35243-1930

Willis of North America, Inc.
Attention: Kellie Smits
26 Century Boulevard
Nashville, Tennessee 37214

CSC Lawyers Incorporating Service, Inc.
Registered Agent, Stuart Allan & Associates, Inc.
150 Perry Street
Montgomery, Alabama 36104

G. Thomas Surtees
Commissioner of Revenue
Department of Revenue
50 North Ripley Street
Montgomery, Alabama 36132

s/Vernon L. Wells, II
Of Counsel